Public Prosecutor v Basri bin Salihin

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NO 47–2–92
VISU SINNADURAI J
16 OCTOBER 1992

Evidence *— Information leading to fact discovered — Whether accused gave information to police — Proof required that accused made statement — Evidence Act 1950 s 27(1)*

Evidence *— Information leading to fact discovered — Information must lead to discovery — Prior knowledge of police — Whether information admissible under s 27(1) of the Evidence Act 1950 — Evidence Act 1950 s 27(1)*

Evidence *— Information leading to fact discovered — Prior knowledge of police — What constitutes prior knowledge — Evidence Act 1950 s 27(1)*

Evidence *— Information leading to fact discovered — Factors determining admissibility under s 27 of the Evidence Act 1950 — Basis of admissibility — Evidence Act 1950 s 27(1)*

Criminal Procedure *— Dangerous drugs — Trafficking — Knowledge — Control and custody — Failure to prove beyond reasonable doubt — Effect of — No presumption under s 37(d) of the Dangerous Drugs Act 1952 — Dangerous Drugs Act 1952 s 37(d) & 39B*

Criminal Law *— Dangerous drugs — Trafficking — Control and custody — Knowledge — Drugs found in wooden bin in public place — Presumption under s 37A of the Dangerous Drugs Act 1952 could not be relied on by prosecution — Dangerous Drugs Act 1952 s 37A*

Evidence *— Information leading to fact discovered — Admissibility under 37A of the Dangerous Drugs Act 1952, s 113 of the Criminal Procedure Code (FMS Cap 6) and s 27 of the Evidence Act 1950 — Whether in conflict — Whether independent of each another — Approach taken by courts — Criminal Procedure Code (FMS Cap 6) s 113 — Dangerous Drugs Act 1952 s 37A — Evidence Act 1950 s 27*

Evidence *— Information leading to fact discovered — Proof that information given by accused — Procedure to be adopted*

The accused was charged with trafficking in dangerous drugs under s 39B of the Dangerous Drugs Act 1952 ('the DDA'). He was arrested at a bus-stop in Jalan Pudu and brought to the Cawangan Anti-Dadah, Police Headquarters ('the CAD') for questioning. The police then took the accused to a stall in the vicinity of the bus-stop where he had been arrested and recovered a partly torn brown envelope containing heroin in a wooden bin by the stall.

The prosecution's case was that the envelope was found as a consequence of information given by the accused to the police during questioning and the information was therefore admissible under s 27(1) of the Evidence Act 1950 ('the Act'). The prosecution argued

A that the information showed that the accused had knowledge, custody and control of the drugs and that the presumptions under s 37(d) of the DDA were applicable.

The accused, however, denied giving the information to the police and alleged that even before he was taken to the CAD, the police took him to the stall and asked him where the drugs were. He said that he did not respond to the question and was taken to the CAD for questioning. The drugs were subsequently found on the second visit to the stall, after the accused was questioned by the police.

The three main issues before the court were: (a) whether there was sufficient evidence to establish that the accused did give the information to the police; (b) if it is established that the accused did give the information, whether the information was admissible under s 27 of the Act; and (c) whether the prosecution had established all the necessary ingredients for the offence with which the accused was charged.

D **Held**, acquitting the accused:

(1) Applying the guidelines on the scope of s 27, and being conscious of the dangers of freely admitting statements allegedly made by accused persons to the police, there must be clear evidence to indicate that the accused did give the alleged information to the police which led to the discovery of certain other facts, in this case, the drugs. In the light of the doubts raised by the defence and in the absence of any uncontroverted proof that the accused did give the information as to the whereabouts of the drugs to the police, the prosecution had failed to prove beyond reasonable doubt that the accused did give the information.

(2) It is a well-established principle of law that in order for information to be admissible under s 27, it must relate to a fact which was not otherwise known to the police. If the fact was already known to the police, no information given by the accused, even if it amounted to a confession, may be admitted under s 27.

(3) Furthermore, any prior knowledge of the police that the accused possessed or had hidden drugs in a particular place, though the exact location had not been identified, would make the subsequent confession inadmissible under s 27 in so far as it relates to the accused's knowledge of the drugs or the place where the drugs were found. The information must be the cause of the discovery and not the basis of confirmation of an already known fact. Where the police could discover a fact without the assistance of the accused, the subsequent finding of the object with the assistance of an accused through the information, cannot make the information admissible under s 27.

(4) There are two important factors in determining whether an information is admissible under s 27: (i) the discovery of the fact must be subsequent to the giving of the information; and (ii) the

fact discovered need not necessarily relate to the discovery of the object used in the commission of the offence, ie it can relate to the place where the accused concealed the object or to the fact that the accused had knowledge of the existence of the object. The fundamental basis of admitting the information is that the subsequent discovery of the fact guarantees the truth of the information or makes the confession reliable. In this case, doubts were cast as to whether the police had knowledge of the envelope in the bin even before the alleged information was given by the accused. Therefore, even if the information was proved to have been given by the accused, the prosecution had failed to establish that the police had no prior knowledge so as to make the information admissible under s 27.

(5) Knowledge is an essential ingredient of the offence of possession and trafficking and without the assistance of the information, the prosecution had failed to establish that the accused had knowledge of the drugs in the bin. Even if the prosecution had succeeded in establishing knowledge, it would still have failed to establish that the accused had custody and control over the drugs as the bin was accessible to the general public and the accused had no exclusive control over it. Control or custody of the drugs is an essential ingredient of the offence of possession and it had not been proved beyond reasonable doubt in the present case. As a consequence also, the prosecution could not rely on the presumption under s 37(d) of the DDA.

Obiter:

(1) It is firmly established that s 27 of the Act, s 113 of the Criminal Procedure Code (FMS Cap 6) and s 37A of the DDA stand independently of each other. As such, a statement made without a caution being first administered or a statement held to be involuntary does not preclude the admission of the statement under s 27. However, as s 27 makes serious inroads into certain fundamental principles of the criminal law, the courts have been cautious in admitting such confessions and a strict interpretation has been given to s 27.

(2) The need for strict proof that the accused gave information leading to the discovery of certain facts places a more onerous responsibility on the police to record the statement made by the accused person in such a manner that the proof of it may be readily established. It is best that the information is recorded in a manner such that no doubt may subsequently be cast as to whether the accused in fact gave such information or of what exactly he had said. To overcome such problems, the police could either tape the recording of the statements made by the accused, or even videotape the entire process.

A [**Bahasa Malaysia summary**

Tertuduh telah dituduh atas kesalahan mengedar dadah berbahaya di bawah s 39B Akta Dadah Berbahaya 1952 ('ADB itu'). Beliau telah ditangkap di sebuah perhentian bas di Jalan Pudu dan dibawa ke Cawangan Anti-Dadah, Ibu Pejabat Polis ('CAD') untuk disoal siasat. B Pihak polis kemudiannya telah membawa tertuduh ke sebuah gerai dekat perhentian bas di mana beliau telah ditangkap dan menjumpai sepucuk sampul surat berwarna perang yang terkoyak sebahagian yang mengandungi heroin, di dalam sebuah tong kayu di sebelah gerai itu.

C Kes pihak pendakwa adalah bahawa sampul surat itu telah dijumpai akibat daripada maklumat yang diberikan oleh tertuduh kepada pihak polis semasa beliau disoal siasat dan dengan demikian, maklumat itu boleh terima di bawah s 27(1) Akta Keterangan 1950 ('Akta itu'). Pihak pendakwa berhujah bahawa maklumat itu menunjukkan bahawa tertuduh mempunyai pengetahuan, jagaan dan kawalan ke atas dadah D itu dan bahawa anggapan di bawah s 37(d) ADB itu terpakai.

Tertuduh, bagaimanapun, menafikan bahawa beliau telah memberi maklumat itu kepada pihak polis dan mengatakan bahawa sebelum beliau dibawa ke CAD, pihak polis telah membawanya ke gerai itu dan menanya beliau di mana terletaknya dadah itu. Beliau berkata E beliau tidak menjawab soalan itu dan telah dibawa ke CAD untuk disoal siasat. Dadah itu kemudiannya dijumpai pada lawatan kedua ke gerai itu, selepas tertuduh disoal siasat oleh pihak polis.

Tiga isu utama dihadapan mahkamah adalah: (a) sama ada terdapat keterangan yang mencukupi untuk menunjukkan bahawa tertuduh telah F memberi maklumat itu kepada pihak polis; (b) jika ianya menunjukkan bahawa tertuduh telahpun memberikan maklumat itu, sama ada keterangan itu boleh terima di bawah s 27 Akta itu; dan (c) sama ada pihak pendakwa telah membuktikan semua faktor yang perlu untuk menunjukkan bahawa tertuduh telah melakukan kesalahan yang dituduh itu.

G

Diputuskan, membebaskan tertuduh:

(1) Dengan memakai garis panduan mengenai skop s 27, dan menyedari akan bahaya yang wujud jika pernyataan yang dikatakan telah dibuat oleh orang yang dituduh kepada pihak polis diterima H secara bebas, mesti terdapat keterangan yang jelas untuk menandakan bahawa tertuduh telahpun memberi maklumat yang dikatakan itu kepada pihak polis dan maklumat itu telah menyebabkan fakta lain yang tertentu dijumpai, iaitu dadah itu di dalam kes ini. Memandangkan keraguan yang telah ditimbulkan I oleh pihak pembelaan dan dengan ketiadaan sebarang bukti yang tidak dicabar bahawa tertuduh telah memberi maklumat mengenai di mana dadah itu berada kepada pihak polis, pihak pendakwa

gagal membuktikan sehingga melampaui keraguan yang munasabah bahawa tertuduh telah memberi maklumat tersebut.

(2) Adalah menjadi suatu prinsip undang-undang mantap bahawa supaya sesuatu maklumat menjadi boleh terima di bawah s 27, ianya mesti berkaitan dengan suatu fakta yang tidak selainnya diketahui oleh pihak polis. Jika fakta itu sudahpun diketahui oleh pihak polis, maklumat yang diberikan oleh tertuduh, walaupun ia merupakan suatu pengakuan salah, tidak boleh terima di bawah s 27.

(3) Lebih-lebih lagi, sebarang pengetahuan terlebih dahulu yang dipunyai oleh pihak polis bahawa tertuduh memiliki atau telah menyembunyi dadah di suatu tempat tertentu, walaupun lokasi sebenar tempat itu tidak dikenal pasti, akan menjadikan pengakuan salah selanjutnya itu tidak boleh terima di bawah s 27 sejauh mana ia berkaitan dengan pengetahun tertuduh tentang dadah itu atau tempat di mana dadah itu dijumpai. Maklumat itu mesti menjadi sebab penjumpaan fakta itu dan bukannya dasar pengesahan suatu fakta yang sudah diketahui. Di mana pihak polis boleh mengetahui sesuatu fakta tanpa pertolongan tertuduh, penjumpaan objek itu kemudiannya dengan pertolongan tertuduh melalui maklumat itu, tidak menjadikan maklumat itu boleh terima di bawah s 27.

(4) Terdapat dua faktor penting untuk menentukan sama ada sesuatu maklumat boleh terima di bawah s 27: (i) penjumpaan fakta itu mesti berlaku selepas maklumat itu diberi; dan (ii) fakta yang dijumpai tidak semestinya berkaitan dengan penjumpaan objek yang digunakan untuk melakukan kesalahan itu, iaitu ia boleh berkaitan dengan tempat di mana tertuduh telah menyembunyikan objek itu atau dengan hakikat bahawa tertuduh mempunyai pengetahuan tentang kewujudan objek itu. Asas utama dalam penerimaan maklumat itu adalah bahawa penjumpaan fakta itu kemudiannya menjamin kebenaran maklumat itu ataupun membuatkan pengakuan salah itu boleh dipercayai. Di dalam kes ini, keraguan telah ditimbulkan sama ada polis mengetahui tentang sampul surat di dalam tong itu sebelum maklumat yang dikatakan itu telah diberikan oleh tertuduh. Oleh itu, sekalipun dapat dibuktikan bahawa maklumat itu telah diberikan oleh tertuduh, pihak pendakwa gagal menunjukkan bahawa pihak polis tidak mempunyai pengetahuan terlebih dahulu, supaya menjadikan maklumat itu boleh terima di bawah s 27.

(5) Pengetahuan merupakan suatu faktor yang amat penting di dalam kesalahan memiliki dan mengedar dadah dan tanpa pertolongan maklumat itu, pihak pendakwa telah gagal menunjukkan bahawa tertuduh tahu mengenai dadah di dalam tong itu. Walau sekalipun pihak pendakwa berjaya membuktikan pengetahuan, ia masih gagal menunjukkan bahawa tertuduh mempunyai jagaan dan

kawalan ke atas dadah itu kerana tong itu mudah didatangi oleh orang awam dan tertuduh tidak mempunyai kawalan eksklusif ke atasnya. Kawalan atau jagaan dadah itu merupakan suatu faktor yang amat penting dalam kesalahan memiliki dadah dan ianya tidak dibuktikan sehingga melampaui keraguan munasabah di dalam kes ini. Sebagai akibatnya juga, pihak pendakwa tidak boleh bergantung kepada anggapan di bawah s 37(d) ADB itu.

Obiter:

(1) Adalah mantap bahawa s 27 Akta itu, s 113 Kanun Acara Jenayah (FMS Bab 6) dan s 37A ADB itu terpakai secara berasingan dan bebas antara satu sama lain. Dengan demikian, sesuatu pernyataan yang dibuat tanpa amaran diberikan terlebih dahulu atau suatu pernyataan yang didapati tidak dibuat secara sukarela tidak dihalang daripada diterima di bawah s 27. Bagaimanapun, oleh kerana s 27 menjejaskan secara serius prinsip asas undang-undang jenayah yang tertentu, mahkamah sangat berhati-hati apabila menerima pengakuan salah dan suatu tafsiran yang ketat diberikan kepada s 27.

(2) Keperluan untuk menunjukkan bukti yang ketat bahawa tertuduh telah memberikan maklumat yang membolehkan fakta tertentu dijumpai meletakkan suatu tanggungjawab yang lebih berat ke atas pihak polis untuk merekodkan penyataan yang dibuat oleh tertuduh itu di dalam suatu cara di mana buktinya boleh ditunjukkan dengan mudah. Terbaiknya jika maklumat itu direkodkan dalam cara di mana tidak ada keraguan yang mungkin ditimbulkan kemudiannya sama ada tertuduh sebenarnya telah memberikan maklumat itu atau mengenai apa yang sebenarnya dikatakan olehnya. Untuk mengatasi masalah sedemikian, pihak polis mungkin boleh merakamkan pernyataan yang dibuat oleh tertuduh semasa ia dicatatkan, ataupun merakamkan keseluruhan proses itu dalam pita video.]

Notes

For cases on information leading to discovery of facts, see 7 *Mallal's Digest* (4th Ed) paras 897–922; [1991] Mallal's Digest 1127; [1992] Mallal's Digest 975 and 976.

For cases on trafficking in dangerous drugs, see 4 *Mallal's Digest* (4th Ed) paras 80–85; [1989] Mallal's Digest 606–614; [1991] Mallal's Digest 822–845; [1992] Mallal's Digest 662–671.

Cases referred to

1 *PP v Ng Goh Weng & Anor* [1979] 1 MLJ 127 (refd)
2 *PP v Sandra Margaret Birch* [1977] 1 MLJ 129 (folld)
3 *Wai Chan Leong v PP* [1989] 3 MLJ 356; [1989] SCR 715 (folld)
4 *R v Ramasamy* [1965] AC 1; [1964] 3 WLR 632 (folld)

5 *Lam Chi-ming & Ors v R* [1991] 3 All ER 172; [1991] 2 AC 212; [1991] 2 WLR 1082 (refd)
6 *R v Warickshall* (1783) 1 Leach 263; 168 ER 234 (refd)
7 *R v Gould* (1840) 9 Car & P 364; 173 ER 87 (refd)
8 *Thurtell and Hunt's Trial* (1824) Notable British Trials 55 (refd)
9 *R v Sang* [1979] 2 All ER 1222; [1980] AC 402; [1979] 3 WLR 263 (refd)
10 *Pulukuri Kotayya v King-Emperor* 74 IA 65; AIR 1947 PC 67 (folld)
11 *PP v Muhamad Nasir bin Shaharuddin & Anor* [1994] 2 MLJ 576 (refd)
12 *Pang Chee Meng v PP* [1992] 1 MLJ 137; [1992] 2 SCR 1 (folld)
13 *PP v Mohd Salleh* [1990] 2 CLJ 825 (refd)
14 *Dudh Nath Pandey v State of UP* AIR (1981) SC 911 (refd)
15 *PP v Tai Mei Yuen* [1990] 1 CLJ 1208 (refd)
16 *PP v Khoo Boo Hock & Anor* [1990] 1 CLJ 971 (refd)
17 *Sum Kum Seng v PP* [1981] 1 MLJ 244 (refd)
18 *PR v Lim Kee Chuan* (25 April 1992, WPPJ 47–61–90) (unreported) (not folld)
19 *Re New Asiatic Co* AIR 1967 Punjab 14 (folld)
20 *PP v Liew Sam Seong* [1982] 1 MLJ 223 (folld)
21 *PP v Norzilan bin Yaacob & Anor* [1989] 1 MLJ 442 (folld)
22 *Mohamad Radhi bin Yaacob v PP* [1991] 3 MLJ 169; [1992] 2 SCR 145 (folld)

Legislation referred to
Criminal Procedure Code (FMS Cap 6) s 113
Dangerous Drugs Act 1952 s 37A
Evidence Act 1950 s 27

Farah Suhanah bte Ahmad Sarji (Deputy Public Prosecutor) for the public prosecutor.
Gulam Mustaffa (*Gulam Mustaffa & Co*) for the accused.

Visu Sinnadurai J:

Undisputed facts

The accused was arrested at a bus-stop in Jalan Pudu, Kuala Lumpur on 8 July 1991. After his arrest, the accused was brought to the Cawangan Anti-Dadah, Police Headquarters ('the CAD') for questioning. After the questioning, which did not last long, about 20 minutes, the police, accompanied by the accused, went to Jalan Sarawak, which was in the vicinity of the bus-stop where the accused was arrested. In a wooden bin (the tong) which was by a stall by the side of the road, a partly torn brown envelope was found. In the envelope was a packet containing heroin. Apart from the envelope, nothing else was found in the bin.

A The accused was then charged as follows:

> Bahawa kamu pada 8 Julai 1991 jam lebih kurang 1.10 pagi, di Jalan Sarawak off Jalan Pudu, di dalam Bandaraya Kuala Lumpur, di dalam Wilayah Persekutuan, telah didapati mengedar dadah berbahaya iaitu satu peket plastik heroin yang beratnya berjumlah 29.44gm, dengan itu kamu telah melakukan satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 (Semakan Akta 234 1980) dan boleh dihukum di bawah s 39B(2) Akta yang sama.

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These are the brief and undisputed facts of the case. As the facts as stated by the prosecution and that of the defence vary materially, it is important to state each of the versions separately.

C

Facts as adduced by the prosecution

The facts of the prosecution's case was adduced mainly through one prosecution witness — Insp Hassan Jalaluddin.

Insp Hassan in his evidence in court stated as follows: On information D received by the police, he together with a police team of seven others, went to the bus-stop at about 12.25am on 8 July 1991. The police arrested the accused who was then standing near the bus-stop. A body search was made on the accused and in his trouser pocket, some personal item were found. However, nothing incriminating was found on the accused.

After the arrest, the accused was brought to the CAD, at the police E headquarters where he was interrogated. During interrogation, the accused gave certain information as to the whereabouts of the drugs. The following conversation was said to have taken place between Insp Hassan and the accused:

F

Insp Hassan:	Jangan takut, tunjukkan kepada saya di mana dadah itu. (Do not be afraid, show me where the drugs are.)
Accused:	Baiklah encik, saya ada menyimpannya di dalam sebuah tong kayu di Jalan Sarawak, Kuala Lumpur. (Alright sir, I have kept it in a wooden bin in Jalan Sarawak, Kuala Lumpur.)

G After having received this information from the accused, Insp Hassan and the accused left the CAD at about 1.05am for Jalan Sarawak. On reaching the area, Insp Hassan found the brown envelope and took it out of the bin.

Insp Hassan said in evidence that he did not know earlier that the drugs were hidden by the accused in the bin and that it was only through this H information given by the accused that he was able to find the drugs in the wooden bin.

Defence version

The accused denied that there was a body search made on him at the bus- I stop at the time of his arrest. More importantly, the accused denied vehemently that he ever gave any information to Insp Hassan at the CAD. In evidence, the accused said that when he was arrested at the bus-stop, the police asked him where the 'barang' was. When he said he did not understand

what the police were inquiring about, he was taken immediately to the stall in Jalan Sarawak where the wooden bin was. Again the accused was asked where the 'barang' was. When he did not respond to this question, they then took the accused to the CAD where he was again interrogated about the 'barang'. Insp Hassan was then said to have made the following comment: 'Tak guna awak bohong lagi, saya tahu di mana awak simpan barang tersebut. (There is no use for you to keep on lying, I know where you have kept the thing.)'

When the accused insisted that he did not know anything about the 'barang', Insp Hassan was said to to have replied, 'Baiklah, awak ikut saya. (Alright, you follow me.)'

The police then took the accused to Jalan Sarawak and on arriving near the wooden bin, Insp Hassan went to the bin and took out the brown envelope. Insp Hassan then asked the accused, 'Ini awak punya? (Is this yours?)'

To which the accused replied, 'Bukan. (No.)'

Prosecution's case against the accused

The prosecution's case against the accused is a straightforward one. The accused is said to have had in his possession the drugs found in the bin as he had both knowledge and custody and control of the drugs. It was further contended that the information given by the accused to Insp Hassan which led to the discovery of the drugs in the bin, was admissible under s 27 of the Evidence Act 1950 ('the Act'). From this information also, there is therefore evidence by the accused's own admission that he had knowledge of the drugs in the bin.

The prosecution further contended that from the same information given by the accused which is admissible under s 27 of the Act, the accused also had custody and control of the drugs in the bin even though the bin was in a public place. The prosecution therefore argued that since the accused had custody and control of the envelope, the presumptions under s 37(d) were applicable.

Issues involved in this case

The accused is charged for trafficking in dangerous drugs. It is therefore the duty of the prosecution to prove that the accused had in his possession the envelope containing the heroin which was found in the bin. To prove possession, the prosecution needs to prove: (i) that the accused had knowledge of the drugs; and (ii) that the accused had some form of custody and control over the drugs which were found in the bin. The duty on the prosecution is to prove these two ingredients of the offence beyond reasonable doubt.

To establish these ingredients, the prosecution has relied heavily on the statements made by the accused which purportedly led to the discovery of the drugs in the bin. The most compelling evidence which the prosecution

attempts to adduce is the information given by the accused. By this information, if admissible, together with some other evidence, knowledge by the accused of the drugs can be conclusively established.

Therefore the three main issues to be dealt with are as follows: (a) whether there is sufficient evidence to establish that the accused did give the information to Insp Hassan as contained in the document produced in court recording the conversation between Insp Hassan and the accused (P11); (b) if it is established that the accused did give the information, whether this information is admissible under s 27 of the Act; and (c) whether the prosecution has also established all the necessary ingredients for the offence with which the accused is charged.

As the first two issues are directly related to s 27 of the Act, I shall first attempt to make a detailed study of the scope of s 27, before deciding on both these two issues.

Information given by an accused: when admissible under s 27 of the Act

Section 27 of the Act provides as follows:

> (1) When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

Basically, the scope of s 27, which is an exception to the general rule provided for in ss 25 and 26 of the Act, is that any information given by an accused, though amounting to a confession, is admissible if any fact is deposed to be discovered as a consequence of the information given. In other words, s 27 of the Act is in the nature of an exception to the general rule governing admissibility of confessions made by accused persons. The general rule as provided for in s 26 of the Act is that no confession made by an accused person is admissible unless made before a judge of the sessions court or a magistrate. However, unlike the position in India, s 26 of the Act has to be read subject to any other law which expressly provides for the admission of confessions. Amongst the laws which expressly provide for the admission of confessions are s 113 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') and s 37A of the Dangerous Drugs Act 1952 ('the DDA'). The Federal Court in *PP v Ng Goh Weng & Anor*[1] expressly held at p 128 that:

> [Section 26 of the Act] is expressed to be 'subject to any express provision containing in any written law'. In our judgment, s 113 of the Criminal Procedure Code is such written law and is an exception expressly permitted by s 26 of the Evidence Act ...

However, as it is well known, both the provisions under the CPC and the DDA allow for the admission of confessions only if the confessions of the accused persons have been voluntarily made. The scope of s 113 of the CPC and s 37A of the DDA are now firmly established. However, one

point that needs to be stressed at this stage is the relationship between s 27 of the Act and s 113 of the CPC (and s 37A of the DDA). Is s 27 abrogated by s 113 of the CPC, and if not, must s 27 be read subject to s 113? A

Though there were some doubts as to whether a statement made by an accused which did not comply with the procedural safeguards under s 113 of the CPC (or s 37A of the DDA) was admissible under s 27, it is now firmly established that s 27 of the Act and s 113 of the CPC (and 37A of the DDA) stand independently of each other. As such, a statement made without a caution being first administered or a statement held to be involuntary does not preclude the admission of the statement under s 27 of the Act: see observations of Arulanandom J in *PP v Sandra Margaret Birch*,[2] as approved by the Supreme Court in *Wai Chan Leong v PP*.[3] Gunn Chit Tuan SCJ, in delivering judgment of the Supreme Court, observed at p 357: B C

> We would agree with the dictum of the learned judge in that case [Arulanandom J in *PP v Sandra Margaret Birch*] that the amended s 113 of our Criminal Procedure Code stands by itself and does not in any way affect s 27 of the Evidence Act and both sections stand independently of each other and are valid in law. D

In *R v Ramasamy*,[4] the Privy Council, on appeal from Sri Lanka, considered in great depth the relationship between s 27 of the Evidence Act of Sri Lanka and the provision under the Criminal Procedure Code prohibiting the admission of statements made by an accused to the police in the course of investigation. Their Lordships concluded at p 27: E

> Their Lordships think that they must accept the conclusion that evidence falling within s 27 can lawfully be given at a trial, even though it would otherwise be excluded as a statement made in the course of an investigation under s 122 [of the CPC]. F

The exception embodied in s 27 of the Act, is peculiar to countries like Malaysia, Singapore, India and Sri Lanka where the law of evidence is incorporated in the Evidence Act. Viscount Radcliffe in delivering the judgment of the Privy Council in *R v Ramasamy*,[4] made the following observations on s 27 of the Evidence Act at pp 14–15: G

> The principle embodied in s 27 has always been explained as one derived from the English common law and imported into the criminal law of British India by the legislators in the mid-nineteenth century. It can be traced in English law as early as the late eighteenth century ... H

Though it was generally thought that s 27 was based on a similar exception under the common law, the Privy Council in the recent decision of *Lam Chi-ming & Ors v R*[5] (on appeal from Hong Kong) has now clearly established that no such exception existed as part of the common law. Lord Griffiths in delivering the judgment of the Privy Council, said at pp 178–179: I

> ... their Lordships are unable to accept that the exception which appears to have existed for a short time in the early part of the nineteenth century, under which

A evidence of part of a confession was admitted, ever became established as a part of the common law. Such a development was repudiated by Lord Scarman in ... *R v Sang* [1979] 2 All ER 1222 at p 1245.

The Privy Council also explained in *Lam Chi-ming*[5] the historical background as to how s 27 first came to be enacted in India. The early English cases, B like *R v Warickshall*,[6] had stated unreliability of the evidence as the ground for rejecting the admissibility of confessions which were not voluntary. In other words, it was held that a confession obtained by the police by improper use of threat or torture or fear could not be relied upon as the truth. However, in a few subsequent cases like, *R v Gould*[7] and *Thurtell and Hunt's Trial*[8] at pp 144–145, the courts held the discovery of a fact though C through an improperly obtained confession, was admissible as it could not be said to be unreliable as the finding of the fact by the police added credibility to the confession.

It was this development in the common law by these few English cases, that subsequently became reflected in s 27 of the Indian Evidence Act, the D Indian legislators taking the view that this was part of the common law. But the English law, as developed in *Thurtell and Hunt's Trial*[8] was short-lived. It never gained acceptance subsequently by the English Courts. The English courts no longer accepted the justification for the exclusion of an improperly obtained confession on the ground of unreliability but on the principle that no man is to be compelled to incriminate himself. In *R v Sang*,[9] Lord E Scarman said at p 1245:

> ... in English law the confession is inadmissible, not because it is unreliable (its reliability is established by what has been found), but because to admit it would be unfair.

F Lord Griffiths in *Lam Chi-ming*[5] said at p 178:

> Their Lordships are of the view that the more recent English cases established that the rejection of an improperly obtained confession is not dependent only upon possible unreliability but also upon the principle that a man cannot be compelled to incriminate himself and upon the importance that attaches in a civilized society to proper behaviour by the police towards those in their custody.

G

Therefore, even though the English courts rejected the admissibility of the improperly obtained confession even if it led to the discovery of certain facts, and thereby this rule never became part of the common law, the rule, however became embedded in India, Sri Lanka, Singapore and Malaysia through s 27 of the Evidence Act. The courts in so construing this section H have accepted the original principle that the basis for this exception was the reliability of the confession. Sir John Beaumont in *Pulukuri Kotayya v King-Emperor*[10] at p 76 observed:

> Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements I made by a person in police custody to be proved ... This section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence ...

Similarly Lord Radcliffe in *R v Ramasamy*[4] said at pp 14–15:

> Section 27, on the contrary, envisages a situation in which circumstances themselves vouch for the truth of certain statements made by an accused person, even though they are made in conditions that would otherwise justify suspicion ...
> ... It [s 27] qualifies for admission any such statement or information that might otherwise be suspect on the ground of a general objection to the reliability of evidence of that type.

Lord Griffiths also made the following pertinent point in *Lam Chi-ming*[5] which is of great importance: his Lordship pointed out that in certain situations, the effect of an improperly obtained information given by an accused leading to the discovery of a fact may have the same severe consequences as that when a person has been forced to make a full confession involuntarily. In both these situations, based solely on the improper confession or statement, a person may be convicted. His Lordship said at p 179:

> But it is surely just as reprehensible to use improper means to force a man to give information that will reveal he has knowledge that will ensure his conviction as it is to force him to make a full confession. In either case a man is being forced into a course of action that will result in his conviction: he is being forced to incriminate himself. The privilege against self-incrimination is deep rooted in English law and it would make a grave inroad upon it if the police were to believe that if they improperly extracted admissions from an accused which were subsequently shown to be true they could use those admissions against the accused for the purpose of obtaining a conviction. It is better by far to allow a few guilty men to escape conviction than to compromise the standards of a free society.

It can therefore be seen that s 27 makes serious inroads into certain fundamental principles of the criminal law applicable in the country. It is for this reason that the courts, in jurisdictions where an exception against the admissibility of confessions is provided for (contained in provisions similar to s 27 of the Act), have been cautious in admitting such confessions made by accused persons. In all these jurisdictions, a strict interpretation has been given to s 27 of the Act.

The attitude of the Malaysian courts as to the dangers of admitting confessions purportedly under s 27 of the Act is now firmly settled by several decisions. This court in a recent decision, *PP v Muhamad Nasir bin Shaharuddin & Anor*,[11] had the opportunity to review some of these decisions. For the present purposes, I would merely reiterate the caution expressed by the Supreme Court in the most recent decision. In *Pang Chee Meng v PP*[12] at p 140, Abdul Hamid Omar LP said:

> ... Section 27 has frequently been misused by the police and the courts should be vigilant about the circumvention of its provisions .... the courts should be very vigilant to ensure the credibility of evidence by the police personnel in respect of this section, which is so vulnerable to abuse.

Bearing in the mind the above principles of law governing s 27 of the Act, I now move on to consider the issues at hand.

Issue one: Whether the accused did give the alleged information to Insp Hassan

That the accused was taken to the CAD immediately after his arrest is not disputed. What, however, is disputed by the defence is that the accused gave certain information to Insp Hassan which subsequently led to the discovery of the drugs hidden in the bin near the stall at Jalan Sarawak. The determination of this issue is essentially one of a question of fact. The court, on the evidence before it, must decide whether the prosecution has established by the evidence that the accused did give the information.

Insp Hassan said in evidence that after the arrest of the accused, the accused was brought to the CAD, and was interrogated. The accused, in answer to a question posed by Insp Hassan, said that he had kept the drugs in a bin in Jalan Sarawak. As stated earlier, Insp Hassan said that he recorded this information given by the accused on a white piece of paper (P11) after he had lodged his report. Insp Hassan also said that it was only through this information that the police found the drugs in the bin. In cross-examination, Insp Hassan said that he did not mention the fact that the accused had given certain information to him in his police report nor did he hand over P11 to the investigating officer when he briefed the latter on the case (the omission to mention the information in the police report may in certain circumstances be fatal for the prosecution's case: see the decision of KC Vohrah J in *PP v Mohd Salleh*[13]).

The accused, in his evidence, denied that he gave any such information to Insp Hassan. He did, however say that at the CAD, he was asked by Insp Hassan where the accused had hid the 'barang'. When the accused denied any knowledge of the 'barang', Insp Hassan told him, 'Tak guna awak bohong lagi, saya tahu di mana awak simpan barang tersebut. (There is no need to lie any more, I know where you have kept the said 'barang'.)'

When the accused still insisted that he did not keep any 'barang', Insp Hassan was alleged to have said, 'Baiklah, awak ikut saya. (Well, in that case, you follow me.)'

Insp Hassan did not deny in cross-examination that he did tell the accused that there was no need to remain silent as Insp Hassan knew that the accused had hidden the drugs. He, however, said that he had told this to the accused as he merely believed that the accused had hidden the drugs. (This statement was also recorded by Insp Hassan in P11).

It is this court's finding that some form of interrogation did take place at the CAD as to the whereabouts of the drugs. Insp Hassan did ask certain questions and the accused did give certain answers. But whether the purpose of this questioning was to ascertain from the accused as to where he had hidden the drugs or whether it was merely to reconfirm the place where the drugs were, is however not clear. It may be said that the very fact that the accused was taken to the CAD soon after his arrest at the bus-stop indicates that the police at that stage did not know where the drugs were. Had they at this point of time known that the accused had hidden it in the bin, the police could very well have taken the accused to the bin from the bus-stop rather than taking him to the CAD.

The defence, however alleged that this exercise was conducted by the police purely for the purposes of extracting a confession from the accused so as to make the confession admissible under s 27 of the Act. Furthermore, the accused said in evidence that even before he was taken to the CAD, he was first taken to Jalan Sarawak where he was asked by the police where the drugs were. Later, when he was brought to Jalan Sarawak again from the CAD, he also noticed that there were some police personnel there already.

Applying the guidelines stated in the several cases discussed above on the scope of s 27, and being conscious of the dangers of freely admitting statements allegedly made by accused persons to the police, especially in cases such as the present where the guilt of the accused hinges precariously on the confession made by the accused, this court is of the view that there must be clear evidence (raising no reasonable doubt) to indicate that the accused did give the alleged information to the police which led to the discovery of certain other facts. In the present case, there appears to be some doubt as to whether the accused did so.

It should be stressed that whilst in most cases, the information given by the accused leading the police to the discovery of a fact forms only one link in the chain of proof, like finding a knife or a weapon used in the commission of a robbery or murder, in cases like the one for which the accused is being charged for, as knowledge is a major ingredient of the offence of possession, the need for strict proof is even greater. I hasten, however to stress that even if the information given by the accused is admissible under s 27, the prosecution would have only succeeded in establishing knowledge of the drugs by the accused and of the existence of the drugs in the bin. It does not by itself establish that the drugs were kept by him there or that they were his: see the Indian Supreme Court case of *Dudh Nath Pandey v State of UP*[14] and the Privy Council decision of *R v Ramasamy*,[4] above.

There is no doubt that such strict proof places a more onerous responsibility on the police to record the statement made by the accused person in such a manner that the proof of it may be readily established. It is best that the information is recorded in a manner such that no doubt may subsequently be cast as to whether the accused in fact gave such information or of what exactly he had said: see also the observations of Edgar Joseph Jr J (as he then was) in *PP v Tai Mei Yuen*,[15] and *PP v Khoo Boo Hock & Anor*[16] adopting in both cases the views expressed by the Federal Court in *Sum Kum Seng v PP*[17] and KC Vohrah J in *PP v Mohd Salleh*,[13] as to the importance of maintaining a proper record by the police of the information supplied by the accused. To overcome such problems, the police in several jurisdictions now either tape the recording of the statements made by the accused, or even videotape the entire process (see for example the procedure adopted by the Hong Kong police in *Lam Chi-ming*[5]). Such a procedure may appear to be cumbersome. But, however, in the interest of justice, especially in cases where the information given by the accused leads to the discovery of a fact which forms the gist of the offence charged, like in cases of possession of prohibited items, such a procedure is desirable. It may also

A be said that justice equally demands such strict proof especially in cases involving the death penalty, where the life of an accused depends very much on the admission of a statement made by him.

I therefore come to the conclusion that in the light of the doubts raised by the defence and in the absence of any uncontroverted proof that the B accused did give the information as to the whereabouts of the drugs to Insp Hassan at the CAD, the prosecution has failed to prove beyond reasonable doubt that the accused did give the information.

Assuming that I am wrong in this finding of fact, I now move on to consider whether the alleged information (even if) given by the accused is admissible under s 27 of the Act.

C

Whether the information given by the accused is admissible under s 27

For an information given by the accused to be admissible under s 27, the information must relate to a fact said to be 'discovered' in consequence of the information given by the accused. In the present case, it is contended by D the prosecution that the drugs were discovered in the bin by the police only as a consequence of the information given by the accused.

It is a well-established principle of law that an information, to be admissible under s 27, must relate to a fact which was not otherwise known to the police. If the fact was already known to the police, no information given by E the accused, even if it amounted to a confession, may be admitted under s 27.

As seen earlier, to understand the scope and the ambit of the section, it is important to bear in mind the basis upon which such evidence has been held to be admissible under s 27 of the Act. The fundamental basis is that the subsequent discovery of the fact guarantees the truth of the information, F or to put it in other words, makes the confession reliable, hence acceptable for admission. The discovery of the fact confirms the reliability of the information. It is for this reason that the emphasis is always placed on the fact discovered — the fact discovered merely confirming what the accused had said. It is not so much to emphasize the fact that a thing was found as G a consequence of the information.

In one of the earliest and leading cases on the scope of s 27 of the Evidence Act, Sir John Beaumont in the Privy Council decision of *Pulukuri Kotayya & Ors v King-Emperor*,[10] on appeal from India said at p 77:

> In their Lordships' view it is fallacious to treat the fact 'discovered' within the H section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' I does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the

statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

These guidelines enunciated by Sir John Beaumont have been consistently followed by the Malaysian courts.

Therefore in determining whether an information is admissible under s 27, two important factors must be borne in mind. First, the discovery of the fact must be subsequent to the giving of the information as this forms the basis for the admission of the information. It is the discovery of the fact which confirms the information given by the accused and not the statement which confirms an already known fact (by the police). As Gunn Chit Tuan SCJ said in *Wai Chan Leong v PP*[3] at p 721, 'The fact must be the consequence and the information the cause of its discovery.'

In certain cases, it is the misunderstanding of this fundamental principle that has led to the admission of an otherwise inadmissible evidence.

Secondly, the fact discovered need not necessarily relate to the discovery of the object used in the commission of the offence. In most cases, the fact relates to the place where the accused concealed the object or to the fact that the accused had knowledge of the existence of the object.

In the present case, can it be said that there is no doubt as to whether the police already had knowledge of the drugs in the bin even before any information was given by the accused? The accused has said on oath that he gave no information to the police regarding the drugs in the bin nor did he, as alleged by the police, take them to where the bin was in Jalan Sarawak to show them the envelope containing the drugs. Insp Hassan, of course, has given evidence to the contrary.

Furthermore, one disturbing feature of the discovery of the envelope in the bin is the fact that the envelope was torn when it was found by the police in the bin. This fact is not disputed. The fact that the envelope was torn at the time it was found, raises a strong inference that someone had found the envelope in the bin earlier and had tampered with it. Most probably, the person who found the envelope in the bin earlier had torn it to determine whether the envelope contained the drugs and having satisfied himself that it did, then left it in the bin. Now who could have tampered with this envelope? The defence's submission is that it must be the police who had checked the envelope even before the accused and Insp Hassan came to Jalan Sarawak after the interrogation at the CAD. It is said that the police must have known of the envelope in the bin earlier and had checked it to make sure that it was the envelope containing the drugs. This, it is further said, clearly substantiates the defence's story that the police already had knowledge of the drugs in the bin.

The effect of all these factors is that there are doubts cast as to whether the police did not already have knowledge of the existence of the envelope in the bin even before the alleged information was given by the accused. Therefore, even if the information was proved to have been given by the accused, the prosecution, on the facts has failed to establish that the police

had no prior knowledge so as to make the information admissible under s 27.

Therefore this court is of the view that even if the accused had given the alleged information to Insp Hassan, the information is inadmissible. In this regard, s 27 therefore cannot assist the prosecution in its case against the accused.

Before I move to consider the next issue, I would like to make the following comments on one important point of law.

One aspect of the law in which there appears to be some confusion is that relating to what constitutes prior knowledge of the fact by the police. As seen earlier, the discovery of the fact must be subsequent to the giving of the information by the accused. Certain decisions, however, appear to suggest that the mere prior knowledge by the police that the accused had, or may have, in his possession a certain object or item was no bar to the admission of the information if the police had not verified the fact before the giving of the information, or that the police had not actually seen the object or item before the information was given.

In this connection, the learned deputy public prosecutor has drawn to the attention of this court the judgment of Abdul Aziz J in the High Court decision of *PR v Lim Kee Chuan*.[18] In that case, Abdul Aziz J held that the mere fact that the police had knowledge or information that the accused was keeping certain drugs did not bar the admission of the confession made subsequently by the accused as to where exactly the drugs were hidden. The learned judge held that so long as the police had not actually recovered the drugs from the place where the accused had kept them, the information given by the accused was admissible under s 27 of the Act. It was held that even though the police had prior information (usually through their own sources), as the fact of the discovery of the drugs was only verified when the exact locality of the drugs was known to them, the police cannot be said to have earlier discovered the fact.

Though there is merit in the approach taken by Abdul Aziz J, there are certain inherent dangers in taking such a wide interpretation of s 27. As pointed out by the courts in numerous cases, there is the danger that any expansion of the scope of s 27 would result in an abuse of the true intention and scope of s 27 and thus defeat its limited purpose. Considering the background to s 27 and the basis upon which confessions made by the accused persons are held to be admissible under s 27 by way of an exception to the general rule, it would appear that in most cases, any prior knowledge by the police that the accused had in his possession or had hidden drugs in a particular place, though the exact and specific location had not been identified, would make the subsequent confession of the accused inadmissible under s 27 in so far as the fact relates to the accused's knowledge of the drugs or the place where the drugs were found. It is for this reason that it has always been said that if the police had the means of discovering the fact without the assistance of the accused, then any information given by the accused is inadmissible. This court has reviewed some of the cases in *PP v*

Mohamad Nasir,[11] where the courts have said that the information to be admissible under s 27 must be the cause of the discovery and not the basis of the confirmation of an already known fact. The manner in which the courts tend to guard against any abuse of s 27 can be seen from the following scathing comments of Khanna J in the Indian case of *Re New Asiatic Co*[19] at p 15:

> What is more serious in the present case is that in my opinion the use of s 27 of the Evidence Act for the purpose of introducing a so-called disclosure statement becomes meaningless and almost farcical, since it is quite obvious that the opium was not in a place of concealment at all and could have been found by the most perfunctory search by a police officer. A disclosure statement in my opinion only has any meaning at all if the place where the incriminating article was recovered is really a place of concealment which it would be difficult or impossible for the police to discover without some assistance from the accused ...

The correct principle of law appears to be that where the police had the means of discovering a fact, or had already discovered a fact, the subsequent finding of the object or item with the assistance of an accused through the information, cannot make the information admissible under s 27: see views of Mohamed Azmi J (as he then was) in *PP v Liew Sam Seong*.[20] As KC Vohrah J said in *PP v Norzilan bin Yaacob & Anor*[21] at p 445:

> To do otherwise would be to misuse the provisions of s 27 of the Evidence Act 1950 so as to allow any police officer to put his question to a person in custody in such a way as and to juxtapose the words therein to give the impression that the person in custody gave information which not only led to the discovery of a fact but also contained an admission in relation to an already discovered fact negating the provisions of ss 24 to 26 of the Evidence Act and circumventing the provisions of s 113 of the Criminal Procedure Code (FMS Cap 6) and provisions of the written law relating to cautioned statements. Only so much of the information as relates distinctly to the fact discovered is admissible.

Finally, it must be remembered that to extract a confession from an accused on a fact which forms the gist of the offence and which is so self-incriminating without the usual safeguards prescribed by the law, is repugnant to the fundamental principles of criminal law applicable in this country. Clearly the intention of the legislators in enacting s 27 was not to abrogate these fundamental safeguards in such a radical manner.

Issue three: ingredients of the offence of trafficking

Without the assistance of the information, and the absence of any other evidence, the prosecution has failed to establish that the accused had knowledge of the drugs in the bin. Knowledge, is of course an essential ingredient of the offence of possession and trafficking. Without proof of it, the prosecution would fail in proving its case against the accused.

I may also point out that even if the prosecution had succeeded in establishing knowledge (either by the statement made by the accused or by any other evidence), the prosecution would still have failed in proving its

A case against the accused, as it has not been established that the accused had custody and control over the drugs in the bin.

The facts of the present case are unusual. In most cases, the prosecution, in proving custody and control of the drugs by an accused, may bring in evidence to show that the drugs were physically carried by the accused or that it was kept in a place (room or house), or even in a vehicle over which the accused had exclusive control. However, in the present case, not only were the drugs found in a public area, but also in a garbage bin which was accessible to the general public and to which the accused alone had no exclusive control. The drugs were not hidden or concealed in a place where no one except the accused had access to. It was in a bin which was accessible to any member of the public in a public area along the side of the road.

Of course in certain situations, a person may still be said to have control and custody of an item (guns or drugs) even though the item was not in his physical presence but was hidden in a secret place. Therefore, a person may be said to have custody and control over a gun which he had buried in a public place if he alone knows where it is and is able to have immediate control over it to the exclusion of all others. The present case, however is different. The accused did not have control of the bin nor could he prevent anyone else from using it. It was in the open and the accused did not have exclusive control over it.

Therefore, on the evidence before this court, it cannot be said that the accused had even some form of custody or control over the drugs found in the bin. Control or custody of the drugs is an essential ingredient of the offence of possession. As such, the second ingredient of the offence of possession, that is custody and control of the drugs, has not been proved beyond reasonable doubt in the present case. As a consequence also, the prosecution cannot rely on the presumption under s 37(d) of the DDA. Had there been some evidence that the accused was seen earlier near the bin or was seen carrying the envelope before he came to the bus-stop, or any other evidence to link the envelope to the accused, the situation may have been different. Furthermore, as the police already had prior information, the police could well have waited until the accused was seen at the bin. But, in their haste, they apprehended the accused too early. As it is, there is not an iota of evidence, except for the alleged information, to link the accused to the envelope containing the drugs.

Conclusion

It is a well-established principle of our criminal law that the general burden of proof relies throughout the trial on the prosecution to prove beyond reasonable doubt the guilt of the accused for the offence with which he is charged. It is the duty of the prosecution to prove each ingredient of the offence beyond reasonable doubt. Furthermore, as Mohd Azmi SCJ in *Mohamad Radhi bin Yaacob v PP*[22] said at p 171:

> There is no similar burden placed on the accused to prove his innocence. He is presumed innocent until proven guilty. To earn an acquittal, [the accused] is merely to cast a reasonable doubt in the prosecution case.

His Lordship further added:

> To earn an acquittal, the court may not be convinced of the truth of the defence story or version. Raising a reasonable doubt in the guilt of the accused will suffice.

Applying the above principles of law to the instant case, I hold that the defence has cast a reasonable doubt on the prosecution's case. The prosecution, therefore has failed to prove the charge of trafficking against the accused.

I therefore acquit and discharge the accused.

Accused acquitted.

Reported by Anne Khoo